

SUPREME COURT PENDING CASES

The following appeals are fully briefed and eligible for assignment by the Supreme Court in the near future.

STATE *v.* JODI D., SC 20370

Judicial District of Waterbury at G.A. 4

Criminal; Assault of a Disabled Person; Whether General Statutes §§ 1-1f (b) and 53a-60b (a) (1) Were Not Unconstitutionally Vague as Applied to the Defendant; Whether Evidence was Sufficient for State to Prove a Beyond a Reasonable Doubt that Victim was “Physically Disabled” under Those Statutes. The defendant was charged with assault of a disabled person in the second degree in violation of General Statutes § 53a-60b (a) (1) after a physical altercation with her sister. Section 53a-60b (a) provides in relevant part that a person is guilty of assault of a disabled person in the second degree when that person commits assault in the second degree against an individual who is “physically disabled” as defined by General Statutes § 1-1f. Section 1-1f (b) in turn provides in relevant part: “An individual is physically disabled if he has any chronic physical handicap, infirmity or impairment, whether congenital or resulting from bodily injury, organic processes or changes or from illness.” At trial, the victim testified about her extensive medical history, including back problems, multiple surgeries, and a nerve condition called fibromyalgia. A physician’s assistant who provided treatment to the victim also testified at trial and noted that he had been treating the victim for “chronic pain issues, chronic low back pain and fibromyalgia syndrome” for several years. The defendant was found guilty and convicted of assault of a disabled person in the second degree, and she appealed. The Appellate Court (190 Conn. App. 353) affirmed the defendant’s conviction. It rejected her claim that § 53a-60b (a) (1) was unconstitutionally vague as applied to her conduct because the term “physically disabled” as used therein and defined by § 1-1f (b) was impermissibly broad and unclear to the average person. The Appellate Court determined that the meaning of the term “physical disability” as used in §§ 1-1f (b) and 53a-60b (a) (1) was readily ascertainable and that the language of the statutes was “general enough to encompass a wide variety of physical conditions, yet specific enough to provide sufficient notice as to its meaning and, specifically, as to the types of bodily conditions encompassed by the term ‘physical disability.’” It accordingly held that “a reasonable person of ordinary intelligence would have anticipated that the statute would apply to the defendant’s violent conduct toward the . . . victim,” given the language of the

statute and the evidence at trial of the victim's medical history. The Appellate Court also rejected the defendant's claim that the evidence was insufficient to establish that the victim was "physically disabled" under § 53a-60b (a) (1). It concluded that the trial testimony of the victim and the treating physician's assistant were sufficient to establish her physical disability and that the defendant's interpretation of "physical disability," with its focus on conclusive diagnosis, would graft limitations on the governing statutes that were not evident as they were written. The defendant has been granted certification to appeal, and the Supreme Court will decide whether the Appellate Court correctly concluded (1) that §§ 1-1f (b) and 53a-60b (a) (1) were not unconstitutionally vague as applied to the defendant and (2) that the evidence presented by the state at trial was sufficient to prove beyond a reasonable doubt that the victim was "physically disabled" under those statutes.

ISAAC HERNANDEZ *v.* APPLE AUTO WHOLESALERS OF
WATERBURY, LLC, et al., SC 20481

United States District Court for the District of Connecticut

Consumer Credit Contracts; Assignee Liability; Whether Holder In Due Course of a Consumer Credit Contract Can Avoid Assignee Liability Under Statute (§ 52-572g) by Reassigning Contract Back to Seller; When is the Limit on Assignee Liability Determined Under § 52-572g; Whether Assignee Liability Under 16 C.F.R. § 433, the "FTC Holder Rule," and § 52-572g is Cumulative. The plaintiff purchased a motor vehicle from the defendant, Apple Auto Wholesalers of Waterbury, LLC, and entered into a retail installment contract with Apple Auto to finance the purchase. In accordance with 16 C.F.R. § 433, commonly referred to as the "FTC Holder Rule," the contract included the following notice: "Any holder of this consumer credit contract is subject to all claims and defenses which the debtor could assert against the seller of goods or services Recovery . . . by the debtor shall not exceed amounts paid by the debtor" Shortly thereafter, Apple Auto assigned the contract to the defendant, Westlake Services, LLC. Approximately one month later, before making any payments under the contract, the plaintiff returned the vehicle to Apple Auto, and the plaintiff's attorney, by letter, notified Apple Auto and Westlake that the plaintiff had revoked his acceptance of the vehicle. Westlake thereafter reassigned the contract back to Apple Auto. Subsequently, the plaintiff brought this action in federal court against the defendants, alleging, inter alia, that Apple

Auto breached the implied warranty of merchantability and violated the federal Truth in Lending Act and the Connecticut Unfair Trade Practices Act. The plaintiff claimed that Westlake, as assignee of the contract, was liable for all claims asserted against Apple Auto pursuant to (1) the FTC Holder Rule, and (2) General Statutes § 52-572g (a). That statute provides in relevant part: “Any holder in due course of a promissory note, contract or other instrument . . . evidencing an indebtedness, signed or executed by a buyer in connection with a credit transaction covering consumer goods, . . . shall be subject to all of the claims and defenses which the buyer has against the seller arising out of the transaction . . . limited to the amount of indebtedness then outstanding . . . provided the buyer shall have made a prior written demand on the seller with respect to the transaction.” The plaintiff and Westlake filed cross motions for summary judgment. The District Court, noting that the resolution of the plaintiff’s claims against Westlake turned on the applicability of § 52-572g and the FTC Holder Rule, observed that no Connecticut state court has addressed (1) whether a holder in due course’s reassignment of a consumer credit contract back to the seller negates that holder’s liability under the FTC Holder Rule and/or § 52-572g, and (2) the relationship between the FTC Holder Rule and § 52-572g regarding assignee liability. The District Court therefore certified, and the Supreme Court accepted, the following questions pursuant to General Statutes § 51-199b: (1) When is the limit on assignee liability, “the amount of indebtedness then outstanding,” determined under § 52-572g? (2) Can an assignee avoid liability under § 52-572g by reassigning the promissory note, contract or other instrument back to the seller? If so, by when must the assignee reassign the loan to avoid liability? (3) If a retail installment contract includes language mandated by 16 C.F.R. § 433, the FTC Holder Rule, is the assignee liability under this incorporated contractual language cumulative to the statutory liability under § 52-572g?

The summaries appearing here are not intended to represent a comprehensive statement of the facts of the case, nor an exhaustive inventory of issues raised on appeal. These summaries are prepared by the Staff Attorneys’ Office for the convenience of the bar. They in no way indicate the Supreme Court’s view of the factual or legal aspects of the appeal.

*Jessie Opinion
Deputy Chief Staff Attorney*
